

LAMONICA HERBST & MANISCALCO, LLP

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June 27, 2019

Via Electronic Filing

Judge Elizabeth S. Stong
United States Bankruptcy Court, E.D.N.Y.
Conrad B. Duberstein U.S. Courthouse
271-C Cadman Plaza East, Suite 1595
Brooklyn, NY 11201-1800

**In re Avenica, Inc. and Gallant Capital Markets, Ltd.
Chapter 11
Case No. 17-41813 (ESS) (jointly administered)**

**In re Esther DuVal, as Chapter 11 Trustee of Gallant Capital
Markets Ltd. v. AFX Capital Markets Ltd. *et al.*
Adv. Proc. No. 18-1038 (ESS)**

To the Honorable Judge Strong:

My firm represents Esther DuVal, solely in her capacity as the Chapter 11 Trustee (the “Trustee”) of the jointly administered estates of Avenica, Inc. and Gallant Capital Markets, Ltd. (collectively, the “Debtors”). The Trustee is also the plaintiff in the pending adversary proceeding (the “Adversary Proceeding”) against AFX Capital Markets Ltd. *et al.* (collectively, the “AFX Defendants”).

On or about May 8, 2019, the Trustee and the AFX Defendants entered into a Stipulation of Settlement (the “Stipulation”) resolving the Adversary Proceeding. Upon execution of the Stipulation, the Trustee filed a motion seeking approval of the Stipulation (the “Motion”) [dkt. no. 49]. The hearing on the Motion is scheduled for July 2, 2019 at 10:00 a.m. (the “Hearing”) (the parties previously agreed to adjourn the originally scheduled hearing).

In accordance with paragraph 1(a) of the Stipulation, the Deposit in the amount of \$230,000 was due to be paid into the attorney escrow account of the AFX Defendants by May 30, 2019, which, at the request of the AFX Defendants, was later extended to June 20, 2019 by the Trustee.

When the Deposit was not paid by the extended date, on June 25, 2017, the Trustee sent another demand to the AFX Defendants and asserted that the AFX Defendants were in default of the Stipulation. Despite the default, the Trustee allowed the AFX Defendants until June 26, 2019 at 4:00 pm to provide to Deposit to their attorney’s escrow account. In fact, days before that, counsel for the AFX Defendants provided a written email representing that the “We were told by the client the money was coming and we are waiting for confirmation.”

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As of the date of this letter, the AFX Defendants are in default under the Stipulation as they have failed to pay the Deposit and their counsel has been unable to provide written confirmation that the Deposit is in their escrow account for the benefit of the Trustee.

Accordingly, at the Hearing, the Trustee will seek to withdraw the Motion seeking approval of the Stipulation and will seek immediate discovery in the case. Unfortunately, it appears that AFX has wasted the Trustee and the Court's time and was successful in creating an environment where everyone believed they were acting in good faith in connection with the signed Stipulation. The Trustee will consider all available remedies in connection therewith.

Thank you for your attention to this matter.

Respectfully submitted,

s/ Joseph S. Maniscalco
Joseph S. Maniscalco

cc: Esther DuVal, Trustee (via email)
Heidi Sorvino, Esq. (via email)

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